

each State to enforce laws prohibiting the sale of tobacco products to minors, oversee these State efforts, and deny certain Federal funds if the State fails to enforce these measures.

Just last week, HHS issued its final rules governing the administration of this law. While I am disappointed that it took more than 3 years to issue these rules, I am encouraged that we may now see results from this policy.

Meanwhile, a component of HHS—the Food and Drug Administration—has also attempted to improperly intervene in this debate on the pretext of protecting our children. I cannot believe that such action is simply a case of one hand not knowing what the other is doing; rather, it demonstrates that the FDA is so out of control that it has decided to disregard congressional intent and pursue its own Federal tobacco policy.

I am pleased that HHS has finally decided to implement congressional policy to keep tobacco away from our children. I urge the President to withdraw the FDA's proposed rules and reject that agency's assertion of jurisdiction over tobacco products. In addition, I am enclosing an editorial on the subject from yesterday's Washington Times. I think my colleagues will find it to be interesting reading.

[From the Washington Times, Jan. 24, 1996]

A CONSENSUS ON TEEN SMOKING

Last week the U.S. Health and Human Services Department (HHS) did something remarkable in the campaign to limit teen smoking. It proposed regulations with which almost everyone agreed. It threatened to strip states of millions of dollars to fight drug and alcohol abuse if they didn't crack down on teen smoking.

To those who haven't followed this controversy, it may seem an odd approach to the problem, to wit: If the states aren't going to limit adolescent smoking, the feds aren't going to let them limit drugs and alcohol abuse either. But so far at least, it has the backing of tobacco foes, friends and perhaps most important, Congress. Lawmakers opened the door to such rules in 1992 when they signed onto legislation from the late Mike Synar requiring states to prohibit the sale of tobacco to persons under 18 years old.

Congressional backing is what separates the HHS rules from the far more publicized and ambitious anti-smoking campaign launched in August by U.S. Food and Drug Administration Commissioner David Kessler. Among other things, he would ban mail-order and vending-machine sales and sharply restrict tobacco advertising.

Many lawmakers subsequently criticized Mr. Kessler for overstepping his authority. Some 120 House lawmakers said in a bipartisan letter to the agency, "So, while we stand steadfastly against tobacco use by minors, we strenuously object to the FDA's effort to expand its jurisdiction and the federal bureaucracy in dealing with a problem that Congress has already designated to the states." Fifth District Virginia Democrat Lewis Payne complained the FDA plan poses a serious threat to Congress' legislative authority. "Under our system of government, it is the Congress, not unselected bureaucrats, who are suppose to make the laws." A similarly critical letter from 32 senators included Tom Daschle, the Democratic minority leader, and Bob Dole, the Republican majority leader, two men not often on the same side of an issue.

The irony of the situation is that Mr. Kessler's critics can find plenty of support for their position from Dr. Kessler himself. In a 1994 letter to anti-tobacco activist Scott Ballin, the commissioner cited the complexity of regulating cigarettes and added, "It is vital in this context that Congress provide clear direction to the agency." Well, Congress has been abundantly clear. It wants states regulating tobacco use by minors.

Mr. Kessler went ahead last August and proposed to regulate tobacco as a "drug," which it has statutory authority to control. But the agency's own internal documents from previous administrations challenge that assessment. "FDA's longstanding position," said one, "has been that, absent therapeutic claims, conventional tobacco products are not drugs under the [Food, Drug and Cosmetics Act]." Said another, "In our opinion, however, providing the FDA with the authority to regulate tobacco would represent a significant change in the scope of its authority in providing consumer protection."

To date, Congress has provided the agency no such authority. By exceeding his own, Dr. Kessler undermines anti-tobacco statutes already on the books. Consider the example he sets. If Dr. Kessler can't bring himself to abide by the law, he is not in the strongest position to complain if retail outlets and minors don't.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

HELPING FLORIDA TOMATO GROWERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. GOSS] is recognized for 5 minutes.

Mr. GOSS. Mr. Speaker, I come to the floor to catalog the extraordinary, bipartisan, bicameral efforts now underway to provide urgent relief for Florida's winter fruit and vegetable industry, particularly the tomato growers. We in Florida have been acutely aware of the damage that has been done to those growers because of import surges from Mexico. Thanks to our Florida delegation's efforts these past days, this problem has become a priority at the highest levels in Washington, in this Congress and downtown in the administration. Everyone now understands that, although NAFTA has generally been working well for our State and the rest of the United States, there has been a clear breakdown of safeguard and relief measures for some of our winter produce industries. Yesterday the Florida delegation—including both Senator MACK and Senator GRAHAM—made a bipartisan push to attach relief language to the continuing resolution to correct a technical problem faced by Florida growers because of existing definitions in section 202 of the 1974 Trade Act.

Appropriations Chairman BOB LIVINGSTON, busy as he was worrying about keeping the Government open as budget matters are sorted out, made

heroic attempts to clear the path for this important fix. And he succeeded in the House. Unfortunately, we hit a snag in the other body relating to adding last minute measures to the bill, and the effort failed. But this fight is not over. We are exploring every possible avenue for getting this done before the upcoming recess begins. Failing that, the plan is to get this language onto the next train that comes through—we expect that train to be the debt limit legislation coming in the end of February.

The section 202 change will not fix everything, but it will help and it will put our administration in a stronger position going into discussions with the Mexican Government. To their credit, Trade Representative Ambassador Kantor and Agriculture Secretary Glickman have been working closely with the Florida delegation on this issue. The Ambassador and the Secretary joined us for a meeting this week in which we agreed on a list of measures that the administration and the delegation can pursue immediately. Section 202 changes are at the top of our task list and that is what the current push is focused on.

In addition, the Ambassador and the Secretary agreed to seek to open negotiations with the Mexican Government on this issue, to support section 202 legislation and packing legislation, to work with Customs and USDA services to ensure that inspections and monitoring are done effectively at the border, and to provide an umbrella under which United States and Mexican growers can meet and work together to solve the current crisis.

If all of these efforts fall short, I am prepared to take more drastic steps. Today, I am introducing legislation that would direct the President to suspend current NAFTA arrangements as they relate to winter tomato production, pending his certification to the Congress that the safeguard provisions and relief measures are functioning effectively and efficiently. This is a more extreme step than I would like to take, because it would violate the NAFTA Agreement. But if that is what it takes to fulfill our commitment to Florida growers, shippers, packers, and truckers trying to stay in business, feed their families, and contribute to the U.S. economy, then I am prepared to move forward.

Florida growers perform a unique function for this country. They compete head-to-head—not with other American producers, but with foreign producers—to provide winter fruits and vegetables for Americans.

Mr. Speaker, I know when Mom and Dad say "Eat your vegetables" to the youngsters in our Nation, they maybe do not all rise up in applause, but the fact of the matter is that we do need to eat our vegetables, and most of them come from Florida, the domestically produced in the winter, and that is an area that we have to focus on and allow those folks to continue in business.